

TTAB

IN THE UNITED STATES AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/446,316  
Published in the Official Gazette on October 22, 2002



05-06-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #22

Elizabeth Arden, Inc.

Opposer, OPPOSITION No.:91155355  
vs.

Ananda C. Rutkoff,

Applicant.

Box TTAB  
Assistant Commissioner for Trademark  
2900 Crystal Drive  
Arlington, VA. 22202-35115

**RESPONSE AND BRIEF TO MOTION SEEKING DEFAULT JUDGMENT**

This is a Response to the Motion Seeking Default Judgment mailed  
To the Trademark Trial and Appeal Board on April 17, 2003. Exhibits  
are attached which give the full text of codes referred to in this  
Response.

Applicant inadvertently omitted the heading, "IN THE UNITED STATES PATENT  
AND TRADEMARK OFFICE BEFORE THE . . ." and use of the title "ANSWER," but  
Applicant did telephone the TTAB Office before filing an Answer to Notice of  
Opposition, and asked if there was a specific form to use. Applicant was told that it was  
only necessary to include the Opposition #91155355 and the Mark "The Millennium  
Hero", the Serial #75/446,316 and address it to the Trademark Trial and Appeal Board.  
Applicant followed all instructions given by the TTAB regarding answering the Notice of

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Opposition and did intend that this answer to Notice of Opposition was filed in a timely way and made all honest and sincere efforts to do so.

Applicant submits that Opposer has made no mention of the fact that Applicant has omitted the above stated heading and title as the material, factual or legal reason that the Opposer has made Motion Seeking Default Judgment. Applicant submits that the Motion Seeking Default Judgment as stated by the Opposer does not state a material, factual or legal reason that the Opposer should have made Motion Seeking Default Judgment, and that he did so in a manner that Applicant believes and sets forth in evidence and facts that may prove that Opposer was in direct violation of §10.18 of the US Trademark Law Rules of Practice and Federal Statutes and “shall be subject to the penalties set forth under 18 U.S.C 1001” and the Patent and Trademark Office Code of Professional Responsibility and thereby responsible to the authority that governs his actions as set forth by the same code for the following reasons:

- A. An answer to the Notice of Opposition was filed in accordance with the legal time limit and in a timely way according to Code.  
Applicant denies any material or legal truth to the Opposer's false statement (a) that an Answer to the Notice of Opposition was not timely filed due to the fact that other than Applicant's inadvertent omission of the heading and title (which the Opposer makes no factual, material or legal mention of), and that Applicant made honest and diligent efforts to file a timely Answer to the Notice of Opposition. Opposer's original letter to applicant was made on March 5, 2003; the answer was due forty days after the mailing date.

Applicant mailed an Answer to the Notice of Opposition on April 11, 2003, less than forty days.

- B. Answer to the Notice of Opposition was on April 11, 2003. This April 11<sup>th</sup> date of Applicant's Answer to the Notice of Opposition, which Opposer refers to as "letter" has been confirmed by the Opposer. Opposer admits that answer to the Notice of Opposition was received on April 11<sup>th</sup>, but Opposer's statement (a) which is false claims that a Notice of Opposition was not timely filed without making material mention of the lack of heading or title or material or legal reason for this statement. Opposer's claim may be considered a falsification of fact and that Applicant did not file in a timely manner is a false statement of fact.
- C. Applicant denies any true, legal, or material grounds for the filing of the Motion Seeking Default Judgment according to any code that Applicant is aware of. Opposer is implying and may be making up a falsification of the legal process by setting forth the statement (b)(c).
- D. Opposer implies that codes specifies his critique of specific language as grounds and reasons for filing a Motion Seeking Default Judgment in both his statements (b) (c).
- E. Opposer sets forth no code and Applicant is not aware of any code which supports his reasons as set forth in his statements (b) and (c).
- F. Opposer gives no material, legal, or true evidence to support the claim statement (b) and(c). Applicant denies that there that there is any legal, material or true basis for the Opposer's reasons.

- G. I deny and solemnly swear that I am unaware of any material, legal or ethical truth to the Opposer's statement (b) and (c) and any and all implications that the US Trademark Law Rules of Practice and Federal Statutes require the use of specific and exact language and use of the word "withdrawing," and that the word "dissolving" is not allowed to be used in its place.
- H. Applicant believes and sets forth that evidence and facts may prove that Opposer is in violation of §10.4 (b) (1), which prohibits a practitioner from using tactics or language, which "willingly falsifies, conceals or covers up by any tricky scheme or device" the fact that there was no stated material or legal basis for his Motion Seeking Default Judgment. Applicant sets forth evidence and facts that Opposer engaged in such a tricky scheme in order only to injure Applicant by filing A Motion Seeking Default Judgment and such behavior is in violation of Code and reason for disciplinary process on the part of proper authorities.
- I. US Trademark Law Rules of Practice and Federal Statutes make no mention that the words "withdrawing its application" must be used and would be the only descriptive term allowed.
- J. Applicant is not aware of any Code, which states this, and if such a Code exists then applicant inadvertently has not been able to locate it and was not aware of it, and if such a code does exist why is it not stated in the motion as required by code with reference to code.

- K. Opposer's Motion Seeking Default Judgment statement (c) confirms and implies that Applicant usage of the word "acquiescence" is somehow materially illegal or specifically not allowed by US Trademark Law Rules of Practice and Federal Statutes. Applicant denies any material or legal validity of Opposer's statement (c) and is not aware of any Code, which states this, and if such a Code exists then applicant inadvertently has not been able to locate it and was not aware of it and if such a code does exist Opposer has made no mention of his legal, material, factual basis for his Motion Seeking Filling of Default Judgment.
- L. Opposer asserted that an answer to the Notice of Opposition was not timely filed. At the same time, Opposer must have known that the answer to the Notice of Opposition was filed in less than forty days.
- M. Opposer makes no mention of any fact, material, evidence, or Code of the US Trademark Law Rules of Practice and Federal Statutes regarding the validity of the Opposer's Motion Seeking Default Judgment.
- N. Opposer also avoids admission of the fact that Applicant's content of the Answer to The Notice Opposition was filed on time.
- O. Applicant believes and sets forth that Applicant believes and sets forth that evidence and facts may prove that Opposer is in violation of Code §10.85, as administrated by the Director and by the Commissioner.

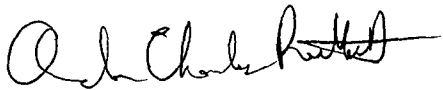
- P. Applicant believes and sets forth that Applicant believes and sets forth that evidence and facts may prove that Opposer willfully violated Section (a)(2) of §10.85 which prohibits him from advancing a claim that is unwarranted under existing law, and Section (5), which prohibits him from knowingly making a false statement of law or fact.
- Q. Opposer is also aware that Section (a)(1) of §10.85 prohibits him from asserting a position before the office when it is obvious that such an action would serve merely to harass or maliciously injure another.
- R. Since Opposer has received and understood Applicant's original concession to Opposer's Notice of Opposition, Applicant believes and sets forth that evidence and facts may prove and show that Opposer's only motive was to injure the Applicant by attempting to file a Motion and Default Judgment and deprive Applicant of his rights thereby through actions which are directly governed and prohibited by §10.18 (2) (i) of US Trademark Law Rules of Practice and Federal Statutes. Also refer to §10.23(2)(ii) "knowingly participating in a material way and knowingly giving false or misleading information to the Office".
- S. Opposer is aware that he has made a false statement regarding timeliness of response by Applicant in his Motion Seeking Default Judgment. Opposer makes no mention to specific reference to Code of US Trademark Law Rules of Practice and Federal Statutes.

- T. Section 508 of Trademark Trial and Appeal Board Manual of Procedure Statutes make no mention of any of the reasons that Opposer states in reference statements (b) and (c).
- U. Opposer appears to use official examiner attorney style and language and rules, none of which are supported by code for filing a Motion Seeking Default Judgment Section 508 of the Trademark Trial and Appeal Board Manual of Procedure.
- V. Evidence, therefore, supports that all statements made by Opposer in the Motion Seeking Default Judgment may be in violation of §10.4(b)(1).
- W. Applicant believes and sets forth that evidence and facts may prove that Opposer knowingly and “willfully falsifies, conceals, or covers up by any tricky scheme, or device a material fact or makes any false, fictitious, or fraudulent statements, or makes or uses any false writing or documentation” as stated and prohibited in §10.4(b)(1).
- X. Applicant believes and sets forth that evidence and facts may prove that Opposer “shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application of document, or the enforceability of any patent trademark, registration, or certificate resulting there from”.
- Y. Applicant believes and sets forth that evidence and facts may prove that Opposer is in violation of codes §10.23 (b) (1), which states that, a practitioner “shall not; Violate a Disciplinary Rule”.

- Z. Opposer understands that according to §10.23 (d) “a practitioner who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity. Deceitful statements of half truths or concealment of material facts shall be deemed actual fraud within the meaning of this part, violating the provision of this subject may also be subject to disciplinary action.”
- AA. Applicant believes and sets forth that evidence and facts may prove that the Opposer is in violation of and has no intent to follow 10.100 Canon 8 which states a practitioner should assist in improving the legal system.

Undersigned hereby certifies that true, accurate and complete copy of the Opposer's correspondence Motion Seeking Default Judgment is hereby submitted to the Trademark Trial and Appeal Board in addition to Applicant's original response to Opposer's Notice of Opposition.

Respectfully submitted,

 5/01/03

Ananda Charles Rutkoff



IN THE UNITED STATES AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/446,316

\_\_\_\_\_  
X

Elizabeth Arden, Inc.

Opposer,

**Certificate of Mailing**

vs.

Ananda C. Rutkoff,

Applicant.

\_\_\_\_\_  
X

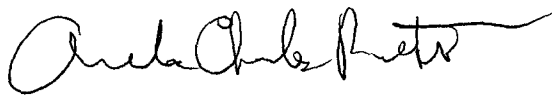
Box TTAB

Assistant Commissioner for Trademark

2900 Crystal Drive

Arlington, VA. 22202

I hereby certify that this correspondence is being deposited with the United States postal service as First Class mail in an envelope addressed to the US Trademark Trial and Appeal Board, 2900 Crystal Drive, Arlington, VA. 22202. Proof of certificate of mailing has been registered with the postal service on May 1, 2003.



\_\_\_\_\_  
Ananda Charles Rutkoff

IN THE UNITED STATES AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/446,316

\_\_\_\_\_X

Elizabeth Arden, Inc.

**Opposer,**

**Certificate of Service**

vs.

Ananda C. Rutkoff,

Applicant.

\_\_\_\_\_X

I hereby certify that this correspondence is being deposited with the United States postal service as First Class mail in an envelope addressed to the Gary Fechter, McCarter and English, LLP, 300 Park Avenue, 18<sup>th</sup> Floor, New York, NY 10022. Proof of certificate of service has been registered with the postal service on May 1, 2003.



\_\_\_\_\_  
Ananda Charles Rutkoff

In the Matter of  
Published in

Elizabeth

vs.

anda C. Rutkoff,

Applicant.

Box TTAB  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202-3513

MOTION SEEKING DEFAULT JUDGMENT

This is in response to the letter Applicant mailed to the Trademark Board on April 11, 2003.

Opposer submits that default should be entered for the following reasons and the Board enter a Notice of Default:

- (a) An Answer to the Notice of Opposition was not timely filed.
- (b) Applicant's letter of April 11, 2003 to the Trademark Board indicates that Applicant is "dissolving" its claim to MILLENNIUM HERO in International, Class 3. Applicant says that it is withdrawing its application to register MILLENNIUM HERO in International Class 3.
- (c) Applicant's letter to Opposer confirms that Applicant's claim to the Trademark MILLENNIUM HERO in International, Class 3, but more importantly (ii) "acquiesces" to Opposer's use of MILLENNIUM HERO in International, Class 3, and is either abandoning or withdrawing its claim to MILLENNIUM HERO in International, Class 3.

IN THE UNITED STATES AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 76/446,316  
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05-06-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #22

Elizabeth Arden, Inc.

**Opposer,**

vs.

**OPPOSITION No.:91155355**

Ananda C. Rutkoff,

Applicant.

Box TTAB  
Assistant Commissioner for Trademark  
2900 Crystal Drive  
Arlington, VA. 22202-35115

**EXHIBITS ACCOMPANYING RESPONSE AND BRIEF TO MOTION SEEKING  
DEFAULT JUDGMENT**

**U. S. TRADEMARK LAW RULES OF PRACTICE**

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**FEDERAL STATUTES**

**U. S. PATENT & TRADEMARK OFFICE**

Seventh Edition - December 2002

**37 C.F.R. PART 10—REPRESENTATION OF OTHERS BEFORE  
THE PATENT AND TRADEMARK OFFICE**

**INDIVIDUALS ENTITLED TO PRACTICE BEFORE THE PATENT  
AND TRADEMARK OFFICE**

**§10.18 Signature and certificate for correspondence filed in  
the Patent and Trademark Office.**

(a) For all documents filed in the Office in patent, trademark, and other non-patent matters, except for correspondence that is required to be signed by the applicant or party, each piece of correspondence filed by a practitioner in the Patent and Trademark Office must bear a signature, personally signed by such practitioner, in compliance with §1.4(d)(1) of this chapter.

(b) By presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that-

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true, and all statements made therein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, that-

(i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of prosecution before the Office;

(ii) The claims and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(c) Violations of paragraph (b)(1) of this section by a practitioner or non-practitioner may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom. Violations of any of paragraphs (b)(2)(i) through (iv) of this section are, after notice and reasonable opportunity to respond, subject to such sanctions as deemed appropriate by the Commissioner, or the Commissioner's designee, which may include, but are not limited to, any combination of-

(1) Holding certain facts to have been established;

(2) Returning papers;

(3) Precluding a party from filing a paper, or presenting or contesting an issue;

(4) Imposing a monetary sanction;

(5) Requiring a terminal disclaimer for the period of the delay; or

(6) Terminating the proceedings in the Patent and Trademark Office.

(d) Any practitioner violating the provisions of this section may also be subject to disciplinary action. See §10.23(c)(15).

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; para. (a) amended, 58 FR 54494, Oct. 22, 1993, effective Nov. 22, 1993; 62 FR 53186, Oct. 10, 1997]

**U. S. TRADEMARK LAW RULES OF PRACTICE**

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**FEDERAL STATUTES**

**U. S. PATENT & TRADEMARK OFFICE**

**Seventh Edition - December 2002**

**§10.23 Misconduct.**

(a) A practitioner shall not engage in disreputable or gross misconduct.

(b) A practitioner shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on the practitioner's fitness to practice before the Office.

(c) Conduct which constitutes a violation of paragraphs (a) and (b) of this section includes, but is not limited to:

(1) Conviction of a criminal offense involving moral turpitude, dishonesty, or breach of trust.

(2) Knowingly giving false or misleading information or knowingly participating in a material way in giving false or misleading information, to:

(i) A client in connection with any immediate, prospective, or pending business before the Office.

(ii) The Office or any employee of the Office.



(3) Misappropriation of, or failure to properly or timely remit, funds received by a practitioner or the practitioner's firm from a client to pay a fee which the client is required by law to pay to the Office.

(4) Directly or indirectly improperly influencing, attempting to improperly influence, offering or agreeing to improperly influence, or attempting to offer or agree to improperly influence an official action of any employee of the Office by:

(i) Use of threats, false accusations, duress, or coercion,

(ii) An offer of any special inducement or promise of advantage, or

(iii) Improperly bestowing of any gift, favor, or thing of value.

(5) Suspension or disbarment from practice as an attorney or agent on ethical grounds by any duly constituted authority of a State or the United States or, in the case of a practitioner who resides in a foreign country or is registered under §10.6(c), by any duly constituted authority of:

(i) A State,

(ii) The United States, or

(iii) The country in which the practitioner resides.

(6) Knowingly aiding or abetting a practitioner suspended or excluded from practice before the Office in engaging in unauthorized practice before the Office under §10.158.

(7) Knowingly withholding from the Office information identifying a patent or patent application of another from which one or more claims have been copied. See §§1.604(b) and 1.607(c) of this subchapter.

(8) Failing to inform a client or former client or failing to timely notify the Office of an inability to notify a client or former client of correspondence received from the Office or the client's or former client's opponent in an *inter partes* proceeding before the Office when the correspondence (i) could have a significant effect on a matter pending before the Office, (ii) is received by the practitioner on behalf of a client or former client and (iii) is correspondence of which a reasonable practitioner would believe under the circumstances the client or former client should be notified.

contractor thereof, who is not a registered practitioner and who advertises invention development services in media of general circulation or who enters into contracts for invention development services with customers as a result of such advertisement.

"Invention development services" means acts of invention development required or promised to be performed, or actually performed, or both, by an invention developer for a customer.

"Invention development" means the evaluation, perfection, marketing, brokering, or promotion of an invention on behalf of a customer by an invention developer, including a patent search, preparation of a patent application, or any other act done by an invention developer for consideration toward the end of procuring or attempting to procure a license, buyer, or patent for an invention.

"Customer" means any individual who has made an invention and who enters into a contract for invention development services with an invention developer with respect to the invention by which the inventor becomes obligated to pay the invention developer less than \$5,000 (not to include any additional sums which the invention developer is to receive as a result of successful development of the invention). "Contract for invention development services" means a contract for invention development services with an invention developer with respect to an invention made by a customer by which the inventor becomes obligated to pay the invention developer less than \$5,000 (not to include any additional sums which the invention developer is to receive as a result of successful development of the invention).

(18) In the absence of information sufficient to establish a reasonable belief that fraud or inequitable conduct has occurred, alleging before a tribunal that anyone has committed a fraud on the Office or engaged in inequitable conduct in a proceeding before the Office.

(19) Action by an employee of the Office contrary to the provisions set forth in §10.10(c).

(20) Knowing practice by a Government employee contrary to applicable Federal conflict of interest laws, or regulations of the Department, agency, or commission employing said individual.

(d) A practitioner who acts with reckless indifference to whether a representation is true or false is chargeable with knowledge of its falsity. Deceitful statements of half-truths or concealment of material facts shall be deemed actual fraud within the meaning of this part.

(9) Knowingly misusing a "Certificate of Mailing or Transmission" under §1.8 of this chapter.

(10) Knowingly violating or causing to be violated the requirements of §1.56 or §1.555 of this subchapter.

(11) Except as permitted by §1.52(c) of this chapter, knowingly filing or causing to be filed an application containing any material alteration made in the application papers after the signing of the accompanying oath or declaration without identifying the alteration at the time of filing the application papers.

(12) Knowingly filing, or causing to be filed, a frivolous complaint alleging a violation by a practitioner of the Patent and Trademark Office Code of Professional Responsibility.

(13) Knowingly preparing or prosecuting or providing assistance in the preparation or prosecution of a patent application in violation of an undertaking signed under §10.10(b).

(14) Knowingly failing to advise the Director in writing of any change which would preclude continued registration under §10.6.

(15) Signing a paper filed in the Office in violation of the provisions of §10.18 or making a scandalous or indecent statement in a paper filed in the Office.

(16) Willfully refusing to reveal or report knowledge or evidence to the Director contrary to §10.24 or paragraph (b) of §10.131.

(17) Representing before the Office in a patent case either a joint venture comprising an inventor and an invention developer or an inventor referred to the registered practitioner by an invention developer when (i) the registered practitioner knows, or has been advised by the Office, that a formal complaint filed by a federal or state agency, based on any violation of any law relating to securities, unfair methods of competition, unfair or deceptive acts or practices, mail fraud, or other civil or criminal conduct, is pending before a federal or state court or federal or state agency, or has been resolved unfavorably by such court or agency, against the invention developer in connection with invention development services and (ii) the registered practitioner fails to fully advise the inventor of the existence of the pending complaint or unfavorable resolution thereof prior to undertaking or continuing representation of the joint venture or inventor. "Invention developer" means any person, and any agent, employee, officer, partner, or independent

[Added 50 FR 5175, Feb. 6, 1985, effective Mar. 8, 1985; amended 50 FR 25073, June 17, 1985; 50 FR 25980, June 24, 1985; paras. (c)(13), (19) & (20), 53 FR 33950, Oct. 4, 1988, effective Nov. 4, 1988; corrected 53 FR 41278, Oct. 20, 1988; paras. (c)(10) & (c)(11), 57 FR 2021, Jan. 17, 1992, effective Mar. 16, 1992; para. (c)(a) amended, 58 FR 54494, Oct. 2, 1993, effective Nov. 22, 1993; para. (c)(9) amended, 61 FR 56439, Nov. 1, 1996, effective Dec. 2, 1996; 62 FR 53186, Oct. 10, 1997; 65 FR 54604, Sept. 8, 2000]

**U. S. TRADEMARK LAW RULES OF PRACTICE**

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**FEDERAL STATUTES**

**U. S. PATENT & TRADEMARK OFFICE**

Seventh Edition - December 2002

**§10.85 Representing a client within the bounds of the law.**

(a) In representation of a client, a practitioner shall not:

(1) Initiate or defend any proceeding before the Office, assert a position, conduct a defense, delay a trial or proceeding before the Office, or take other action on behalf of the practitioner's client when the practitioner knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that a practitioner may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the practitioner is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when the practitioner knows or it is obvious that the evidence is false.

(7) Counsel or assist a client in conduct that the practitioner knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(b) A practitioner who receives information clearly establishing that:

(1) A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to

rectify the same, and if the client refuses or is unable to do so the practitioner shall reveal the fraud to the affected person or tribunal.

(2) A person other than a client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

[Added 50 FR 5180, Feb. 6, 1985, effective Mar. 8, 1985]

**U. S. TRADEMARK LAW RULES OF PRACTICE**

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**FEDERAL STATUTES**

**U. S. PATENT & TRADEMARK OFFICE**

Seventh Edition - December 2002

**§10.100 Canon 8.**

A practitioner should assist in improving the legal system.

[Added 50 FR 5181, Feb. 6, 1985, effective Mar. 8, 1985]

## From the Manual of the Trademark Trial and Appeal Board

### 508 Motion for Default Judgment for Failure to Answer

If a defendant fails to file an answer to a complaint during the time allowed therefor, the Board, on its own initiative, may issue a notice of default allowing the defendant 20 days from the mailing date of the notice in which to show cause why default judgment should not be entered against it. If the defendant fails to file a response to the notice, or files a response which does not show good cause, default judgment may be entered against it. See 37 CFR 2.106(a) and 2.114(a); FRCP 55(a) and 55(b); and TBMP 317.

The issue of whether default judgment should be entered against a defendant, for failure to file a timely answer to the complaint, may also be raised by means other than the Board's issuance of a notice of default. For example, the plaintiff, realizing that the defendant is in default, may file a motion for default judgment (in which case the motion may serve as a substitute for the Board's issuance of a notice of default); or the defendant itself, realizing that it is in default, may file a motion asking that its late-filed answer be accepted. However the issue is raised, the standard for determining whether default judgment should be entered against the defendant, for its failure to file a timely answer to the complaint, is the FRCP 55(c) standard, which requires that the defendant show good cause why default judgment should not be entered against it. See TBMP 317, and authorities cited therein.

If a plaintiff files a motion for default judgment for failure of the defendant to file a timely answer to the complaint, and the defendant fails to file a brief in



opposition to the plaintiff's motion, default judgment may be entered against defendant. See FRCP 55(b) and 55(c), and 37 CFR 2.127(a).

If a defendant files an answer after the due date therefor, but before the issuance by the Board of a notice of default, and also files a motion asking that the late-filed answer be accepted, and the plaintiff fails to file a brief in opposition to the defendant's motion, the motion may be granted as conceded. See 37 CFR 2.127(a), and TBMP 502.03.

For further information concerning default judgment for failure of the defendant to file a timely answer to the complaint, see TBMP 317.